IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE SIDE

WRIT PETITION NO.4513 OF 2005

Shri Krishna Ramchandra Thakur .. ..Petitioner

Versus

The State of Maharashtra & Ors. .. ..Respondents

Mr.Vijay Gharat for the petitioner

Respnodent no.2 present in person

CORAM : P.V.KAKADE, J.

DATE : 4th APRIL, 2006

P.C.:

1. Heard the learned counsel for the petitioner. The respondent no.2 present in person though the advocate is absent.

2. The petitioner has challenged the order passed by the District Court, Raigad dated 18.3.2005 by which allowing the appeal and dismissing the decree passed by the trial court on 19.12.2003.

3. The plaintiff came with the case that the suit property bearing a room situate on eastern portion of House No.285 admeasuring 14 x 21 ft. and a shed admeasuring 10 x 12 ft. situate at Village Bhendibazar, Karanja, Post Karanja, Tal. Uran, Dist. Raigad was let out to late Usman Issak Solkar by Yashwant Ramchandra Thakur. Usman Solkar was residing in the said tenanted property along with his family. He died on 25.6.1991, thereafter his wife Sabira and younger son Hidaytulla continue to reside there as tenant. Another son of late Usman stated to be residing in another house bearing No.276 in the same village, which was purchased by late Usman in the name of plaintiffs and the agreed rent was Rs.20/= p.m. Plaintiffs as such occupying the premises as tenant. Yashwant refused to accept the rent and stated that since there is a dispute between him and his brother i.e. Defendant no.1 Krishna, he would not accept the rent and therefore, dispute as to whom the rent should be paid arose and hence the interpleader suit to claim relief as per the rent was filed along with prayer for declaration of a status as tenant in the demised premises and injunction was also sought for as consequential relief.

4. The learned trial judge after hearing both the parties and on the basis of available evidence came to the conclusion that the plaintiffs failed to prove that there is dispute about the tenancy rights in between them and landlord or in between legal heirs of deceased Usman Solkar. It was further held that the plaintiffs proved that they were tenant in a room admeasuring 14 x 12 ft. with a shed of 10 x 12 ft. and as such the suit came to be dismissed.

. The appeal was carried to the District Court Raigad at Alibag. The learned District Judge after hearing both the parties and on the basis of available evidence allowing the appeal holding that the plaintiffs were tenant in the demised premises including the room and shed. It was further held that the rent was to be paid to the present petitioner and plaintiffs were held entitled for declaration and status of tenant of the suit premises. Further it was held that the plaintiffs were entitled to claim injunction restraining the defendant from taking possession except indue course of law and as such appeal came to be allowed. Hence the present petition by defendant no.1 is filed.

5. The learned counsel for the petitioner submitted that his only grievance was to the effect that injunction was issued against him by the lower appellate court, however, in my view, the nature of injunction is much clear to the extent that the plaintiffs are held entitled to claim injunction to restrain the defendant from taking possession except in due course of law, which in my view, cannot be faulted. So far as status of petitioner-defendant no.1 is concerned, it is needless to mention that he is declared to be landlord, entitled to receive the rent and as such grievance sought to be made by the petitioner has no force. It is also to be clarified that if the petitioner wants to take the recourse to the law that opportunity is always made available by the lower appellate court stating that injunction is subject to rider that he can proceed indue course of law against the respondent.

6. In view of this position, I do not see any merits in the petition, especially the reasoning adopted and finding recorded by the lower court appears to be just, legal and proper and there is no perversity.

7. In the result, the petition is devoid of any merits and therefore, stands dismissed with no order as to costs.